



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 4, 1996

Ms. Doreen E. McGookey
Assistant City Attorney
City of Dallas
501 Police & Courts Building
Dallas, Texas 75201

OR96-1829

Dear Ms. McGookey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101014.

The City of Dallas Police Department (the "city") received a request for "a copy of all public documents regarding the completed Internal Affairs Division ["IAD"] investigation (Control number 96-031P) into an allegation of sexual harassment against civilian Dallas Police Department employee Jose Cisneros." You have submitted to this office for our review a copy of the request letter and a representative sample of the requested information.¹ You object to releasing the documents and assert that the requested information should be protected from public disclosure in its entirety pursuant to section 552.108 of the Government Code. Additionally, you contend that portions of the requested information are excepted from required public disclosure pursuant to section 552.101 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents at issue.

First, we address your assertion that section 552.108 of the Government Code excepts the requested information in its entirety. You assert that this exception applies to the requested records, because their release would make it more difficult for the city to conduct internal investigations concerning misconduct and violations of city personnel policies. You state that the release of the information would also make it difficult to obtain the cooperation of the witnesses and subjects of the investigation.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108. Where no criminal investigation or prosecution results from an investigation for alleged misconduct, section 552.108 is inapplicable. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). You do not claim, nor is it apparent from the face of the submitted records, that the investigation is criminal in nature. Rather, the investigation appears to involve only administrative or personnel matters and is not the type of investigation that section 552.108 was designed to shield from public exposure. We conclude, therefore, that the city may not withhold the requested information under section 552.108 of the Government Code.

Next, we address your assertion that section 552.101 of the Government Code excepts some of the requested information from required public disclosure. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the information submitted to us for review is protected by the doctrine of common-law privacy as applied in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files in *Ellen* contained individual witness and victim statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. 840 S.W.2d 519. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* The court held, however, that the nature of the information, that is, names of witnesses and detailed affidavits regarding allegations of sexual harassment, was exactly the kind of information specifically excluded from disclosure under the privacy exception as described in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *Id.* at 525. In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

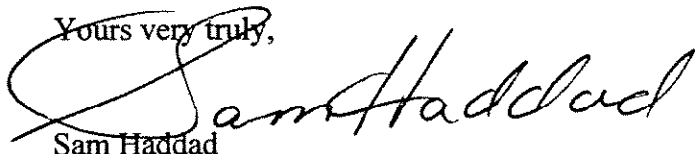
The *Ellen* decision controls the release of the documents you have submitted for our review. Included among them are witness statements, investigator's notes, inter-departmental memorandums, and other investigation records. We believe there is a legitimate public interest in the substance of the complaints regarding the allegations of sexual harassment. These documents provide a summary of the allegations similar to the records required to be disclosed by the *Ellen* court. However, the *identities* of the complainants and witnesses to the alleged sexual harassment are excepted from

disclosure by the common-law invasion of privacy doctrine as applied in *Ellen* and *Industrial Foundation*.

The representative sample of the documents submitted have been marked by your office with the type of information that should be withheld pursuant to *Ellen*. In this instance, we agree that you have correctly marked most of the information which must be withheld under *Ellen*, in conjunction with section 552.101 of the Government Code.² To the extent you have marked certain documents which contain the identities of complainants and witnesses to the alleged sexual harassment matters, these identities are excepted under common-law privacy as incorporated by section 552.101. *See generally* Open Records Decision No. 400 (1983) at 2 (information that is confidential by law may not be released even if previously disclosed). However, some of the remaining portions of the marked documents you submitted *may not* be withheld as there is a legitimate public interest in the substance of the complaints regarding the allegations of sexual harassment. *See, e.g.,* Open Records Decision No. 444 (1986) at 4 (legitimate public interest in information relating to public employees). Specifically, in regards to the conclusion and summary section of the findings regarding the allegations of sexual harassment certain information must be de-identified and released, which we have tagged and marked. Additionally, the requestor is entitled to the testimony and internal statements of the person under investigation, subject to the names of the complainants and witnesses being withheld. *See Ellen*, 840 S.W.2d 519. Accordingly, the requested information, except for the information marked as excepted under *Ellen*, must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Sam Haddad", written over the typed name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/cbh

Ref.: ID# 101014

Enclosures: Marked documents

²We urge you to exercise caution when releasing this type of information. *See* Gov't Code § 552.352 (providing penalties for improper release of confidential information).

cc: Mr. Robert Ingrassia
Reporter
The Dallas Morning News
Communications Center
P. O. Box 655237
Dallas, Texas 75265
(w/o enclosures)